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1           IN THE UNITED STATES DISTRICT COURT  
2           FOR THE SOUTHERN DISTRICT OF NEW YORK  
3 -----X  
4 ROBERT A. FALISE; LOUIS KLEIN, JR.;  
5 FRANK MACCHIAROIA; and CHRISTIAN E.  
6 MARKEY, JR., as Trustee,           Case No.  
99 CV 7392 (JBW)  
7                           Plaintiffs,       Related to:

97 CV 7640 (JBW)  
8           vs.  
9 THE AMERICAN TOBACCO COMPANY;  
10 RJ REYNOLDS TOBACCO COMPANY;  
11 B.A.T. INDUSTRIES, PLC; BROWN &  
12 WILLIAMSON TOBACCO CORPORATION; PHILIP  
13 MORRIS INCORPORATED; LIGGETT GROUP, INC.  
14 and LORILLARD TOBACCO COMPANY,  
15                           Defendants.

16 -----X  
17                           VOLUME III VIDEOTAPED  
18                           DEPOSITION OF ALEXANDER HOLTZMAN  
19                           New York, New York  
20                           Wednesday, June 21, 2000  
21

22 Reported by:  
23 ANNETTE ARLEQUINCSR NO. 1450  
24 JOB NO. 109886

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1  
2  
3  
4                           June 21, 2000  
5                           2:21 p.m.  
6

7           Continued videotaped deposition of  
8 ALEXANDER HOLTZMAN, held at the offices of  
9 WINSTON & STRAWN, 200 Park Avenue, New York,  
10 New York, pursuant to Subpoena, before  
11 ANNETTE ARLEQUIN, a Certified Shorthand  
12 Reporter and a Notary Public of the State  
13 of New York.  
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1 A P P E A R A N C E S:  
2  
3  
4 ORRICK, HERRINGTON & SUTCLIFFE, LLP  
5 Attorneys for Plaintiffs  
6 666 Fifth Avenue  
7 New York, New York 10103  
8 BY: MICHAEL T. STOLPER, ESQ.

9  
10  
11 WINSTON & STRAWN  
12 Attorneys for Defendant Philip Morris  
13 Incorporated  
14 1400 L Street, N.W.  
15 Washington, D.C. 20005-3502  
16 BY: TIMOTHY M. BROAS, ESQ.  
17 B. BALLARD ROGERS, ESQ.  
18 -and-  
19 HUNTON & WILLIAMS  
20 951 East Byrd Street  
21 Riverfront Plaza East Tower  
22 Richmond, Virginia 23219-4074  
23 BY: KERRY L. GREY, ESQ.  
24

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1 A P P E A R A N C E S (Cont'd.):  
2  
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4 GILBERT, SEGALL AND YOUNG LLP  
5 Attorneys for Alexander Holtzman  
6 430 Park Avenue  
7 New York, New York 10022-3592  
8 BY: SEAN C. SHEELY, ESQ.  
9 JEFFREY E. LIVINGSTON, ESQ.  
10  
11

12 A L S O P R E S E N T:

13  
14 MARCELO RIVERA, Legal videographer  
15 Esquire Video Services  
16  
17  
18 MICHAEL E. ELSNER, ESQ., Claims Resolution  
19 Management Corporation  
20  
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22  
23  
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1 THE VIDEOGRAPHER: This is tape No. 4,  
2 the continued videotaped deposition of  
3 Mr. Alexander Holtzman. The date is 6-21  
4 2000 on 2:21 p.m.  
5 Will the court reporter please swear  
6 in the witness.  
7 A L E X A N D E R H O L T Z M A N, resumed as  
8 a witness, having been previously sworn by  
9 the Notary Public, was examined and  
10 testified further as follows:  
11 REDIRECT EXAMINATION  
12 BY MR. BROAS:  
13 MR. STOLPER: I'll state for the  
14 purposes of the transcript what we have  
15 discussed off the record, which is at this  
16 point we're going to proceed with redirect  
17 and I'm going to reserve the right to  
18 continue my examination, if need be, of  
19 Mr. Holtzman.

20 MR. BROAS: Okay. And just for the  
21 record, it's our position that plaintiffs  
22 deposition of Mr. Holtzman was completed at  
23 the last session and we'll proceed with  
24 redirect at this time.

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1 BY MR. BROAS:

2 Q. Mr. Holtzman, my name is Tim Broas. I  
3 represent Philip Morris, one of the defendants in  
4 this action, and I have a few redirect questions  
5 for you.

6 You recall in the first session of  
7 your deposition you were asked some questions  
8 about the Frank statement?

9 A. Yes.

10 Q. Now, in 1954 when the Frank statement  
11 was published, were you employed by Philip  
12 Morris?

13 A. No, I wasn't.

14 Q. And in 1954 when the Frank statement  
15 was published, in fact, you were working at a law  
16 firm; is that correct?

17 A. Yes.

18 Q. And at that time in 1954, did that law  
19 firm represent Philip Morris?

20 A. No.

21 Q. And did that law firm represent at  
22 that time any tobacco industry clients?

23 A. No.

24 Q. When did you join Philip Morris?

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1 A. I joined the company in 1968.

2 Q. And when was the first time that you  
3 actually read the Frank statement?

4 A. I estimate it was around 1960.

5 Q. And prior to the time you actually  
6 read the Frank statement, had you heard anything  
7 about the Frank statement?

8 A. No. Not that I can recall.

9 Q. So it's fair to say that you had  
10 nothing to do with the drafting of the Frank  
11 statement; is that correct?

12 A. No, that's correct.

13 Q. And it's fair to say that you had  
14 nothing to do with the editing of the Frank  
15 statement; is that correct?

16 A. That's correct.

17 Q. Did you ever discuss the editing or  
18 drafting of the Frank statement with anyone who  
19 was involved in preparing it?

20 A. I did not.

21 Q. And did you ever have any  
22 conversations with anyone who prepared the Frank  
23 statement regarding the meaning of the Frank  
24 statement?

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1 A. Not that I can recall.

2 Q. Now, you were also asked some  
3 questions about the Council for Tobacco Research,  
4 otherwise known as the CTR.

5 Do you recall those questions?  
6 A. Yes.  
7 Q. You were asked whether the Hammond  
8 Selikoff studies were the types of studies that  
9 CTR should have investigated.  
10 Do you recall that testimony?  
11 MR. STOLPER: Objection.  
12 Q. You can answer.  
13 A. Yes, I do.  
14 Q. Did you have any role in determining  
15 what areas or subjects CTR should research?  
16 A. No.  
17 Q. Did you have any role in determining  
18 what areas CTR should investigate?  
19 A. No.  
20 Q. Did you ever recommend that CTR do any  
21 research on any matter?  
22 A. No.  
23 Q. Did you ever recommend that CTR do any  
24 research on asbestos exposure and tobacco?

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page 404

1 A. No.  
2 Q. And you recall you were asked  
3 about categories of topics that should have been  
4 investigated by CTR.  
5 Do you remember that testimony?  
6 A. Yes.  
7 Q. Did CTR ever seek data or information  
8 from any organizations that had done statistical  
9 studies regarding tobacco?  
10 MR. STOLPER: Objection.  
11 BY MR. BROAS:  
12 Q. You can answer.  
13 A. Yes, it did.  
14 Q. And on how many occasions that you're  
15 aware of?  
16 A. On two occasions that I recall.  
17 Q. And did they obtain the data that they  
18 requested?  
19 A. No, they did not.  
20 Q. Who did they seek to obtain the data  
21 from?  
22 A. It was from the American Cancer  
23 Society.  
24 Q. And do you recall what the data was

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1 that they were trying to obtain?  
2 A. They were studies in which Dr. Cuyler  
3 Hammond participated and did the statistical  
4 analysis.  
5 They were -- the first, I believe, was  
6 a study of a cancer society study of a million  
7 men investigating various factors that may have  
8 been associated with cancer in those who  
9 developed cancer.  
10 And the second was a study that was  
11 done by Dr. Hammond and Dr. Auerbach concerning  
12 dogs who were taught to smoke.  
13 Q. And in both instances the American  
14 Cancer Society refused to turn over the data to  
15 CTR; is that correct?

16 A. That's correct.  
17 MR. STOLPER: Note an objection to  
18 that question. I was a little slow in  
19 getting it out.  
20 BY MR. BROAS:  
21 Q. You recall from your last, actually  
22 from your first session, Mr. Holtzman, you were  
23 asked some questions about the Johns-Manville  
24 smoking ban.

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1 Do you recall that testimony?  
2 A. Yes, I do.  
3 Q. And Mr. Stolper showed you a document  
4 and marked it as exhibit, Holtzman Exhibit 33,  
5 which I'm going to show you.  
6 MR. BROAS: Now, the one I have here  
7 is not the one the court reporter marked.  
8 This is one that I marked, so you might want  
9 to remark it as Holtzman-33. Is that okay?  
10 MR. STOLPER: I'll stipulate to that.  
11 MR. BROAS: I'm sorry about that.  
12 MR. STOLPER: It's quite all right.  
13 MR. BROAS: If you can mark this as  
14 33.  
15 (Defendant's Exhibit Holtzman-33, Memo  
16 dated 3-30-77 from Holtzman to Distribution,  
17 marked for identification, as of this date.)

18 BY MR. BROAS:

19 Q. I'm showing you, Mr. Holtzman, what's  
20 been previously marked by plaintiff as Holtzman  
21 Exhibit 33. It's a memorandum from you to  
22 Distribution dated March 30th, 1977.

23 MR. BROAS: And I want to note for the  
24 record that this is a Bliley document, and

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1 we had objected to the use of it at the last  
2 session and we still maintain that  
3 objection, but for the purposes of redirect  
4 we want to ask Mr. Holtzman some questions  
5 about it, and by doing so we're not waiving  
6 any objections on the basis of privilege.

7 BY MR. BROAS:

8 Q. Do you recall looking at that  
9 document, Mr. Holtzman?

10 A. Yes, I do.

11 Q. And does this document reflect your  
12 recollection as to what was happening with  
13 respect to the Johns-Manville smoking ban?

14 MR. STOLPER: Before you answer,  
15 Mr. Holtzman, I should note, Tim, if you're  
16 looking for a response on your statement as  
17 to whether or not this is a waiver, I'm  
18 reserving my right to object to your use of  
19 this document in terms of its implications  
20 for waiver or not. But I don't want to  
21 obstruct your inquiry, so with that said...

22 MR. BROAS: I understand.

23 A. Can I hear --

24 Q. I'll repeat the question.

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1 Does this document refresh your  
2 recollection as to what was happening at that  
3 time with respect to the Johns-Manville smoking  
4 ban?

5 A. Yes, it does.

6 Q. And in this document you indicate in  
7 the second paragraph that you had received a  
8 report on a case initiated by Johns-Manville to  
9 set aside an arbitrator's decision which would  
10 have permitted smoking in designated areas of an  
11 asbestos plant during morning and afternoon  
12 breaks.

13 Do you see that language?

14 A. Yes.

15 Q. Was this the first time that you  
16 had -- strike that.

17 I gather that before you wrote this  
18 memo of March 30th, '77, you had just received a  
19 report on this case; is that correct?

20 MR. STOLPER: Objection. Leading.

21 A. That seems to be the case, based on  
22 what I'm shown here.

23 Q. And when you received that report, was  
24 that the first time you had heard anything about

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1 the Johns-Manville smoking ban?

2 MR. STOLPER: Before you answer,  
3 Mr. Holtzman, I should note that, Tim, I  
4 don't believe we have a copy of that report,  
5 and the position that's been taken by the  
6 defendants is that we're limited to the four  
7 corners of the document.

8 You're now inquiring about a document  
9 that's referenced in here. In prior  
10 examinations, the defense position has been  
11 that we're not entitled to inquire about  
12 that, so proceed accordingly.

13 MR. BROAS: I don't think we took that  
14 position at Mr. Holtzman's deposition.

15 MR. STOLPER: I'm not sure whether you  
16 have or not.

17 MR. BROAS: Okay.

18 BY MR. BROAS:

19 Q. Mr. Holtzman, before you wrote this  
20 memo -- strike that.

21 Before you received this report about  
22 this case, had you heard anything at all about  
23 the arbitration between the union and  
24 Johns-Manville?

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1 A. No, I hadn't.

2 Q. Was this the first time that you had  
3 heard of the case?

4 MR. STOLPER: Objection.

5 A. Yes.

6 Q. And I gather when you heard about it,  
7 this was after the arbitrator had already made a  
8 decision in the case; is that correct?

9 MR. STOLPER: Objection. Leading.

10 A. Based on what the memo says, that  
11 seems to be correct.

12 Q. And again, you said based on what the  
13 memo says.

14 If you go down to the last paragraph  
15 on this page, you recite what the arbitrator  
16 held.

17 Do you see that?

18 A. Yes, I do.

19 Q. Does that refresh your recollection  
20 that by the time you received this report, the  
21 arbitrator had already issued his ruling?

22 MR. STOLPER: Objection. Leading.

23 BY MR. BROAS:

24 Q. Go ahead.

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1 A. Yes, it does.

2 Q. Now, if you go over to the second  
3 page, Mr. Holtzman, in the second paragraph you  
4 talk about, you say, "In its present lawsuit in  
5 the United States District Court in Texas,  
6 Johns-Manville seeks to vacate the arbitrator's  
7 award."

8 Do you see that?

9 A. Yes.

10 Q. So am I correct that at the time you  
11 received this report about this case,  
12 Johns-Manville had already filed in Federal  
13 District Court, an action to vacate the award?

14 A. Yes.

15 MR. STOLPER: Objection.

16 BY MR. BROAS:

17 Q. Did Philip Morris or any  
18 representative of the tobacco industry in any way  
19 encourage the union to challenge the smoking ban?

20 MR. STOLPER: Objection.

21 A. Not to my knowledge.

22 Q. Did Philip Morris or any  
23 representative of the tobacco industry have  
24 anything to do with the decision by the union to

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1 arbitrate the smoking ban issue with  
2 Johns-Manville?

3 A. No.

4 Q. Did Philip Morris or any  
5 representative of the tobacco industry assist in  
6 preparing or prepare any of the briefs filed with  
7 the arbitrator concerning the smoking ban?

8 MR. STOLPER: Objection.

9 A. No.

10 MR. STOLPER: Can I have that last  
11 questioned read back?

12 (Question was read back as follows:

13 "QUESTION: Did Philip Morris or any  
14 representative of the tobacco industry  
15 assist in preparing or prepare any of the  
16 briefs filed with the arbitrator concerning  
17 the smoking ban?")

18 BY MR. BROAS:

19 Q. Did anyone from Philip Morris or any  
20 representative of the tobacco industry  
21 participate in any way in the arbitration  
22 proceeding?

23 A. No.  
24 MR. STOLPER: I'd like to note an

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page 413

1 objection.

2 BY MR. BROAS:

3 Q. In your memorandum, you paraphrase  
4 what the union and Johns-Manville argue to the  
5 arbitrator and also what the arbitrator ruled.

6 Mr. Holtzman, did you have a copy of  
7 the complaint and the arbitrator's ruling when  
8 you wrote this memo?

9 MR. STOLPER: Objection.

10 A. It appears I did, yes.

11 Q. And how does it appear that you did?

12 A. The last paragraph says, "Copies of  
13 the arbitrator's ruling and complaint in court  
14 action are available if you wish to see them," so  
15 I assume they were in my possession.

16 MR. BROAS: I'd like to mark -- this  
17 is a document that was not marked by  
18 plaintiff in this action. It was marked by  
19 one of your colleagues, Mike, in the Temko  
20 deposition, T-e-m-k-o, as Temko Exhibit 18,  
21 it's also in the same case, but we'll mark  
22 it as Defendant's Holtzman Exhibit 63.

23 (Defendant's Exhibit Holtzman-63,  
24 "Memorandum of Points and Authorities in

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1 Support of The Plaintiffs' Cross Motion for  
2 Summary Judgment in an Action before the  
3 United States District Court for the Eastern  
4 District of Texas entitled 'Johns-Manville  
5 Sales Corporation versus International  
6 Association of Machinists, Local Lodge  
7 1609', marked for identification, as of  
8 this date.)

9 BY MR. BROAS:

10 Q. Mr. Holtzman, would you please review  
11 this document. In particular, if you look at the  
12 page numbers that are handwritten down in the  
13 right-hand corner, and you will see that this  
14 document, which is entitled "Memorandum of Points  
15 and Authorities in Support of The Plaintiffs'  
16 Cross Motion for Summary Judgment in an Action  
17 before the United States District Court for the  
18 Eastern District of Texas entitled Johns-Manville  
19 Sales Corporation versus International  
20 Association of Machinists, Local Lodge 1609," it  
21 contains several exhibits.

22 And if you turn to the page that's  
23 marked in the lower right-hand corner 93, you'll  
24 see the table of contents from the arbitration

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1 record.

2 A. Yes, I see it.

3 Q. Do you see that?

4 A. Yes.

5 Q. And it includes the decision by the  
6 arbitrator, and No. 2 is the arbitration brief  
7 submitted by the union.



8           If you can turn to the arbitration  
9 brief submitted by the union, which is at page  
10 107 in the lower right-hand corner.

11           (Witness complies.)

12 BY MR. BROAS:

13       Q.    Have you seen that document before,  
14 Mr. Holtzman?

15       A.    No, I have not.

16       Q.    You've seen this entire document,  
17 though, Exhibit 63. You have seen this before,  
18 have you not?

19           MR. STOLPER:  Objection.

20 BY MR. BROAS:

21       Q.    You have seen it before?

22       A.    I believe so, yes.

23           MR. STOLPER:  Tim, are you taking the  
24 position that Mr. Holtzman is a hostile

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1       witness and that you're intentionally  
2 leading?

3           MR. BROAS:  No. Just in the interest  
4 of expedience.

5 BY MR. BROAS:

6       Q.    Have you seen Holtzman Exhibit 63  
7 before?

8       A.    I'm sorry. Which exhibit?

9       Q.    The entire exhibit. Have you seen it  
10 before?

11       A.    Yes, I think I have.

12       Q.    And have you reviewed the attachments  
13 before?

14           MR. STOLPER:  Objection. Asked and  
15 answered.

16       A.    I believe I have.

17       Q.    And if you'll go back to page 107,  
18 which is the brief on behalf of the union, I'd  
19 like to direct your attention to that.

20       A.    Yes.

21       Q.    Have you seen that attachment before?

22           MR. STOLPER:  Objection. Asked and  
23 answered. I believe he said he hasn't seen  
24 it.

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1 BY MR. BROAS:

2       Q.    Take a look through it, Mr. Holtzman,  
3 and tell me whether that refreshes your  
4 recollection as to whether you've seen it before.

5           (Witness complies.)

6       A.    That's right. I think I have seen  
7 this in connection with this Exhibit 103.

8       Q.    Exhibit 63?

9       A.    Sixty-three. I'm sorry.

10       Q.    Have you read this brief before on  
11 behalf of the union?

12       A.    I think I have, yes.

13       Q.    And to your knowledge, Mr. Holtzman,  
14 did anyone from Philip Morris or representative  
15 of the tobacco industry have anything to do with  
16 preparing this brief?

17           MR. STOLPER:  Objection.

18       A.    No, not to my knowledge.

19 Q. Did anyone from Philip Morris or any  
20 representative of the tobacco industry provide  
21 any input whatsoever into the positions taken by  
22 the union in this brief?

23 MR. STOLPER: Objection. Foundation.

24 A. Not to my knowledge.

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1 Q. Now, if you'll also turn now,  
2 Mr. Holtzman, again the lower right-hand corner,  
3 page No. 94 --

4 A. I have it.

5 Q. -- which is, according to the table of  
6 contents, the decision of the arbitrator dated  
7 December 6th, 1976.

8 Have you seen that document before?

9 A. Yes, I have.

10 Q. Would this have been -- was this the  
11 document that you referred to in your March 30th,  
12 1977 memo when you said "Copies of the  
13 arbitrator's ruling and the complaint in the  
14 court action are available..."? Is that the  
15 arbitrator's ruling you were referring to?

16 A. Yes.

17 Q. What did the arbitrator find in his  
18 decision?

19 A. Well, he found that Johns-Manville did  
20 not have the right to unilaterally promulgate a  
21 rule prohibiting smoking, and that the union  
22 contract prevented the employer from making  
23 changes in the working conditions without  
24 consultation with the union.

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1 Q. Did the arbitrator disagree with  
2 Johns-Manville regarding its allegations about  
3 the hazards of smoking?

4 A. No, he did not.

5 Q. I want to show you, Mr. Holtzman, you  
6 can put that aside, I want to show you what  
7 Mr. Stolper marked in your previous deposition as  
8 Exhibit 35.

9 MR. BROAS: Can you remark that?

10 (Defendant's Exhibit Holtzman-35,  
11 cover letter from Temko to Crowder with an  
12 enclosed memorandum, marked for  
13 identification, as of this date.)

14 BY MR. BROAS:

15 Q. I'm showing you what's been previously  
16 marked as Exhibit 35. It's a very difficult to  
17 read document containing a cover letter from  
18 Mr. Temko of Covington & Burling to a Mr. Crowder  
19 with an enclosed memorandum.

20 Do you recall seeing that at your last  
21 deposition, Mr. Holtzman?

22 A. Yes, I do.

23 Q. And you recall Mr. Stolper asked you  
24 some questions about this document.

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1 Do you recall that?

2 A. Yes, I do.

3 Q. Do you have an understanding as to how

4 the Tobacco Institute came to assist the union in  
5 the drafting of this memoranda?

6 MR. STOLPER: Objection. Foundation.

7 A. Well, it's my understanding that the  
8 union approached the Tobacco Institute for  
9 assistance in sustaining the arbitrator's award,  
10 the arbitrator's ruling.

11 Q. And do you have an understanding as to  
12 when the union approached the Tobacco Institute?

13 A. I believe it was when Johns-Manville  
14 took an appeal to the District Court from the  
15 ruling of the arbitrator.

16 Q. And do you have an understanding  
17 whether the Tobacco Institute, through its  
18 lawyers, prepared a draft memorandum which it  
19 sent to the lawyers for the union?

20 MR. STOLPER: Objection. Leading.

21 A. It did.

22 Q. And is it your understanding that the  
23 Tobacco Institute did, in fact, prepare such a  
24 memorandum?

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1 MR. STOLPER: Objection.

2 A. Yes.

3 Q. And is Exhibit 35, which is before  
4 you, is that the document that the Tobacco  
5 Institute's lawyers prepared and sent to the  
6 union?

7 MR. STOLPER: Can I have the question  
8 read back?

9 (Question was read back as follows:  
10 "QUESTION: And is Exhibit 35 which is  
11 before you, is that the document that the  
12 Tobacco Institute's lawyers prepared and  
13 sent to the union?")

14 MR. STOLPER: Objection. Foundation  
15 and leading.

16 A. Yes, it appears to be the draft  
17 document that they prepared and sent to the  
18 union.

19 Q. Have you looked through that brief  
20 before, Mr. Holtzman?

21 A. I'm sorry. Which brief?

22 Q. The brief in front of you. The brief  
23 that is attached to Mr. Temko's letter.

24 A. The draft?

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1 Q. Yes.

2 A. Yes, I have.

3 Q. And what is -- strike that.  
4 Have you read that brief before?

5 MR. STOLPER: Objection.

6 Before today? Before the deposition?

7 MR. BROAS: Before today.

8 A. Yes, I believe I have.

9 Q. And what is your recollection as to  
10 what the general nature of the arguments made in  
11 that memorandum are?

12 MR. STOLPER: Objection.

13 A. The argument, as I remember it and as  
14 I see it here, is principally that the -- just as

15 the union argued below; the court has no  
16 jurisdiction to overturn an arbitrator's award.  
17 This is based on the collective bargaining  
18 agreement between the union and the company.

19 Q. And did the brief make any argument  
20 concerning the validity of Johns-Manville's  
21 health-related reasons for instituting the  
22 smoking ban?

23 A. No.

24 Q. Did it make any argument concerning

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page 423

1 the health effects of smoking?

2 A. No.

3 Q. Did it make any argument concerning  
4 the alleged synergistic effects of asbestos and  
5 tobacco exposure?

6 A. No.

7 Q. Is there any reference in that brief  
8 anywhere which suggests that smoking does not  
9 present a health risk?

10 MR. STOLPER: Objection.

11 A. No.

12 Q. Do you -- strike that.

13 Did you ever come to learn what the  
14 outcome of the federal court litigation was  
15 between the union and Johns-Manville?

16 A. Yes.

17 Q. And what do you recall was the  
18 outcome?

19 A. The District Court upheld the  
20 arbitrator's decision.

21 Q. And did Johns-Manville appeal that  
22 decision to the Court of Appeals?

23 A. So I understand, yes.

24 Q. Did the tobacco industry assist in the

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1 appeal on behalf of the union?

2 MR. STOLPER: Objection.

3 A. No.

4 Q. And do you know what happened on the  
5 appeal?

6 A. The District Court ruling was  
7 sustained.

8 Q. This is 34. I want to show you a  
9 document that Mr. Stolper previously marked as  
10 Exhibit 34.

11 MR. BROAS: I would ask the court  
12 reporter to please remark it.

13 (Defendant's Exhibit Holtzman-34, Memo  
14 dated 3-2-79 from Bowling and Mebane to  
15 Holtzman, marked for identification, as of  
16 this date.)

17 BY MR. BROAS:

18 Q. Mr. Holtzman, do you recall seeing  
19 this document at your last session?

20 A. Yes, I do.

21 Q. And this is a document dated March  
22 2nd, 1979 to you and Mr. Bowling from Joan  
23 Mebane, subject, "No Smoking in the Workplace."

24 Do you recall Mr. Stolper asked you

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1 some questions about this document as well; is  
2 that correct?

3 A. Yes.

4 Q. And if you would refer to the second  
5 page, the fourth full paragraph on the second  
6 page, Ms. Mebane reports on one of the speakers  
7 at the conference she attended by a gentleman  
8 named Walter Cooper.

9 Do you see that paragraph?

10 A. Yes, I do.

11 Q. Would you take a minute to read  
12 through that paragraph and refresh your  
13 recollection of this document.

14 (Witness complies.)

15 A. Yes, I read it.

16 Q. Does Ms. Mebane refer to the Texas  
17 litigation that we've just been discussing in  
18 that paragraph?

19 A. Yes.

20 Q. And where is that reference in that  
21 paragraph?

22 A. It says, "JM's right to unilaterally  
23 clamp on the ban has been challenged as a  
24 violation of civil liberties, and the company was

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1 taken to court by one of its unions in a  
2 jurisdictional dispute."

3 Well, it doesn't mention Texas. I  
4 assume that that's the action that she was  
5 talking about.

6 Q. Now, was it your understanding when  
7 you read this document that the smoking ban  
8 imposed by Johns-Manville had been put into  
9 effect?

10 MR. STOLPER: Objection.

11 A. I'm sorry. When I read this document,  
12 yes, it appeared that the smoking ban had been  
13 put into effect.

14 Q. Now, if you'll read the next sentence  
15 after the sentence you just read that starts,  
16 "Now JM..." Can you read that for the record?

17 A. Yes. "Now JM involves the unions,  
18 especially in the comprehensive education  
19 campaign which is the key to the program."

20 Q. And then just for completion sake, can  
21 you read the last sentence?

22 A. "Otherwise, an employee will end up  
23 having to prove on his own behalf that his work  
24 environment imposed unreasonable conditions on

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1 him."

2 Q. I'm sorry. No, it's the previous  
3 paragraph, Mr. Holtzman.

4 A. I'm sorry.

5 Q. The last sentence of the previous,  
6 "The justification..."

7 A. "The justification for enforcement is  
8 that no smoking..." in quotes, "...is viewed by  
9 management to be just as important a safety and  
10 health regulation as the requirements to wear

11 special shoes, respirators, et cetera."  
12 Q. So it appears, does it not, that  
13 instead of unilaterally imposing a smoking ban,  
14 Johns-Manville decided to cooperate with the  
15 unions to agree on the terms of the smoking ban;  
16 is that correct?

17 MR. STOLPER: Objection.

18 A. Yes.

19 MR. STOLPER: Mr. Holtzman, for the  
20 benefit of the court reporter, if perhaps  
21 you could pause between the question and  
22 answer so if I need to object, I can get it  
23 in there and not force us to speak over each  
24 other and cause all sorts of things.

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1 THE WITNESS: Okay.

2 MR. STOLPER: Thank you.

3 BY MR. BROAS:

4 Q. Did Philip Morris or anyone in the  
5 tobacco industry do anything to try to influence  
6 the smoking ban negotiations between the union  
7 and Johns-Manville that occurred after the  
8 litigation in Texas concluded?

9 MR. STOLPER: Objection.

10 A. No.

11 Q. Having reviewed the documents that we  
12 have reviewed today, since your last deposition  
13 and here today, Mr. Holtzman, do you believe that  
14 the Tobacco Institute's assistance in the  
15 preparation of the memorandum for the union was  
16 the wrong thing to do at that time?

17 MR. STOLPER: Objection.

18 A. Well, it's hard to say from this time  
19 looking back, but I believe at that time we felt  
20 that certain bans on smoking could be and should  
21 be challenged, and the union initiated the  
22 challenge and simply asked for some technical  
23 help in drafting the brief, which the Tobacco  
24 Institute provided. I can't say that that was

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1 the wrong thing to do and under the circumstances  
2 at the time.

3 MR. BROAS: That's all I have.

4 MR. STOLPER: Can we just take a  
5 break, go over our notes.

6 THE VIDEOGRAPHER: The time is 2:56  
7 p.m. and we're going off the record.

8 (Off the record.)

9 THE VIDEOGRAPHER: The time is 3:18  
10 p.m. we're back on the record.

11 RE-CROSS EXAMINATION

12 BY MR. STOLPER:

13 Q. Good afternoon, Mr. Holtzman. As you  
14 know, I'm Michael Stolper. I represent the  
15 plaintiffs in the Falise matter and I just have a  
16 few follow-up questions to ask you this  
17 afternoon.

18 You were asked a series of questions  
19 about whether or not the defendants in this case  
20 or the tobacco industry had gotten involved in  
21 the Johns-Manville smoking ban litigation.

22 Do you recall the series of questions  
23 that you were asked?

24 MR. BROAS: Objection.

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1 A. Yes, I do.

2 Q. Okay. And you answered affirmatively  
3 today about whether or not the defendants got  
4 involved in the smoking ban litigation; isn't  
5 that right?

6 MR. BROAS: Objection to the form.

7 I don't believe that's a correct

8 characterization of his testimony.

9 BY MR. STOLPER:

10 Q. You can answer.

11 A. I answered, I'm sorry, affirmatively  
12 as to whether they got involved in the smoking  
13 ban?

14 I don't know that I would put it quite  
15 that way. They got involved in the appeal from  
16 an arbitrator's ruling by providing a memorandum  
17 once. That's the extent of the involvement, I  
18 think.

19 Q. You previously testified that you  
20 didn't recall whether or not Johns-Manville had  
21 implemented a smoking ban.

22 Do you remember the testimony?

23 MR. BROAS: Objection to the form.

24 Can you show him the testimony? Can

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1 you refer us to a page? Can you refer us to  
2 a question and answer?

3 A. No, I believe I say that I  
4 couldn't -- I didn't recall the episode when  
5 Johns-Manville implemented the smoking ban.

6 Q. And you previously testified that you  
7 weren't sure what the industry did in response to  
8 the Johns-Manville smoking ban.

9 MR. BROAS: Object to the form.

10 Again, I think the witness should be  
11 shown his previous testimony if you want to  
12 ask a question about it.

13 If you recall it, Mr. Holtzman, you  
14 can answer.

15 A. I'm sorry. What was the question?

16 Q. You previously testified that you  
17 weren't sure what the tobacco industry did in  
18 response to the Johns-Manville smoking ban.

19 MR. BROAS: Object to the form. It's  
20 not even a question, that's a statement.

21 BY MR. STOLPER:

22 Q. You can answer it.

23 A. Well, prior to seeing any documents, I  
24 was uncertain whether we had done anything.

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1 Q. So your knowledge about what the  
2 tobacco industry has done with regard to the  
3 Johns-Manville smoking ban is based on the  
4 documents you've seen since your deposition?

5 A. Well, they were based -- it was based  
6 on the documents I saw at my deposition.

7 Q. Are they limited to the documents that  
8 you saw at your deposition?  
9 MR. BROAS: Is what limited, Counsel,  
10 the documents? Is that what you're saying  
11 when you say "Are they limited"?  
12 BY MR. STOLPER:  
13 Q. You said your knowledge is limited to  
14 the documents that you saw at the deposition. I  
15 want to confirm that.  
16 MR. BROAS: Object to the form.  
17 A. You know, I am not entirely certain.  
18 I saw documents also in connection with my  
19 preparation for the deposition so...  
20 Q. Did you prepare for today's  
21 deposition?  
22 A. Yes.  
23 Q. For how long did you prepare?  
24 A. I would say a couple of hours.

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1 Q. And who did you prepare with?  
2 A. With Mr. Broas and Ballard Rogers and  
3 Jeff Livingston, Sean Sheely.  
4 Q. And were you shown documents during  
5 this preparation?  
6 A. Yes, I was.  
7 Q. Do you recall which documents you were  
8 shown?  
9 MR. BROAS: I'm going to object on  
10 grounds of work product and privilege.  
11 If you recall which documents you were  
12 shown, you can answer the question.  
13 A. You know, I can't remember  
14 specifically, but I think some of the documents  
15 that I was shown on redirect were documents that  
16 I was shown at the preparation.  
17 Q. Were you shown documents other than  
18 the ones that had been marked as exhibits here  
19 today or shown to you today that were previously  
20 marked at your deposition?  
21 A. I can't say. You know, I don't know  
22 whether this includes all of the documents or  
23 not.

24 MR. STOLPER: Tim, I'm looking for a  
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1 representation from counsel as to whether or  
2 not he's been shown documents that haven't  
3 been marked as exhibits in preparation for  
4 his deposition.  
5 MR. BROAS: I don't think I have to  
6 make that representation.  
7 MR. STOLPER: Well, he's already  
8 waived the privilege by telling us the  
9 knowledge that he has of today based on the  
10 testimony he's given is tied to the  
11 documents you showed him, so the privilege  
12 is waived as to the extent you've got  
13 documents you showed him.  
14 MR. BROAS: I objected on grounds of  
15 privilege. I said that if he can recall  
16 what he was shown, he can testify to that.  
17 MR. STOLPER: Prior to that, he's



18 already -- he was asked what he knew about  
19 it. You asked him what he knew about the  
20 smoking ban. He said, "Well, what I know is  
21 based on the documents that have been shown  
22 to me at the deposition and in your prep  
23 session."

24 MR. BROAS: And he also testified on

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1 redirect that his recollection was refreshed  
2 by some of these documents, so it's not just  
3 the documents, but his recollection that was  
4 refreshed.

5 MR. STOLPER: Right.

6 MR. BROAS: He said that on redirect.

7 MR. STOLPER: But his knowledge of  
8 this issue is based on a series, a  
9 collection of documents either that he was  
10 shown at his deposition or you showed him.

11 The question I have for you is, are  
12 those universes the same thing, are we're  
13 fighting about nothing, or are there  
14 documents that you have shown him that we  
15 haven't seen on this issue?

16 MR. BROAS: I don't have to answer  
17 that question.

18 MR. LIVINGSTON: I don't think he said  
19 his knowledge was limited to these  
20 documents. I don't remember hearing that  
21 testimony.

22 MR. STOLPER: He testified to that.

23 MR. BROAS: No, he did not limit it to  
24 those. He said that that's part of the

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1 basis for his recollection of the documents.

2 MR. STOLPER: Well, I'd rather not  
3 retestify for him. We can pull the  
4 transcript up, but I'd rather avoid a  
5 dispute and I'd rather avoid having to  
6 continue this deposition over this point.  
7 If he has -- if we have seen the documents  
8 that you've shown him, then it's an  
9 non-issue.

10 MR. BROAS: Why don't you just ask him  
11 which documents regarding the smoking ban  
12 that --

13 MR. STOLPER: He just said he couldn't  
14 recall whether there's any other documents.

15 MR. BROAS: Then there's his  
16 testimony.

17 MR. STOLPER: I'm asking you because  
18 there's a waiver of privilege and we push it  
19 or we don't push it.

20 MR. BROAS: I disagree that there's  
21 been a waiver so I'm not going to answer any  
22 questions about that.

23 MR. STOLPER: So your position is  
24 you're not going to tell me whether or not

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1 there are documents he has seen regarding  
2 the smoking ban that we have not marked as

3 exhibits today?  
4 MR. BROAS: I'm not going to tell you  
5 that, no. I don't have an obligation to and  
6 I don't believe there's been a waiver.  
7 MR. STOLPER: Okay. We'll just  
8 litigate it.  
9 BY MR. STOLPER:  
10 Q. Mr. Holtzman, my apologies if we have  
11 to come back.  
12 Mr. Holtzman, you were asked about  
13 whether or not the tobacco industry got involved  
14 in the appeal of the Federal District Court's  
15 decision in the Johns-Manville smoking ban  
16 litigation.  
17 Do you recall being asked that?  
18 A. Yes.  
19 Q. And do you recall telling defense  
20 counsel that you didn't believe the tobacco  
21 industry got involved in that appeal?  
22 A. In the appeal? I'm sorry. Which  
23 appeal are you speaking of?  
24 Q. From the District Court.

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1 A. From the District Court to the Circuit  
2 Court?  
3 Q. Uh-huh.  
4 A. Yes, I believe I said I didn't believe  
5 that the tobacco industry was involved in that  
6 appeal.  
7 Q. What's the basis of your knowledge of  
8 whether or not the tobacco industry got involved  
9 in that appeal?  
10 A. I didn't see anything that indicated  
11 that there was any involvement in the appeal.  
12 Q. So it's possible, if you weren't shown  
13 a document by either me at your deposition or  
14 your lawyers in preparation, it's possible that  
15 there are documents that reflect the tobacco  
16 industry's efforts on that appeal, you just  
17 haven't seen them; isn't that right?  
18 A. I guess that's true.  
19 Q. Have you spoken with Mr. Temko since  
20 your deposition?  
21 A. No, I have not.  
22 Q. Have you talked to anybody other than  
23 the lawyers that helped prepare you, about the  
24 smoking ban?

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1 A. No, I haven't.  
2 Q. So you haven't asked Mr. Temko or  
3 anybody else from the tobacco industry whether or  
4 not the tobacco industry have gotten involved in  
5 other aspects of the smoking ban litigation?  
6 A. No, I haven't.  
7 Q. Okay. Now, you said, I believe you  
8 testified, that it's your understanding that the  
9 union approached the tobacco industry; is that  
10 right?  
11 A. Yes.  
12 Q. How do you know that the union  
13 approached the tobacco industry?

14 MR. BROAS: Objection to the form.  
15 I don't think he said he knew it. I  
16 think he said that was his understanding.  
17 You can answer.

18 A. I believe I did say it was my  
19 understanding or belief that the union approached  
20 the tobacco industry.

21 Q. Sure.  
22 What's the basis of your  
23 understanding?

24 A. Well, I suppose it's based on, and

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1 this is speculative, ordinarily the Tobacco  
2 Institute would not go out and volunteer its  
3 services unsolicited, and I assume that that  
4 would probably be the case here.

5 Q. So your understanding of who  
6 approached whom in this smoking ban dispute is  
7 really based on speculation; isn't that right?

8 MR. BROAS: Object to the form.

9 A. I guess that's true, yes.

10 Q. No one has told you that the union  
11 approached the tobacco industry?

12 A. I think I inferred it partially from  
13 the letter written by counsel for the union to  
14 Mr. Temko which seemed to solicit his  
15 assistance.

16 Q. But that letter doesn't indicate  
17 whether that's the first solicitation of  
18 assistance; isn't that right?

19 A. No, it doesn't.

20 Q. Are you aware that the Tobacco  
21 Institute contacted New Jersey Bell to assist  
22 with the Shimp case?

23 MR. BROAS: Objection to the form.

24 Foundation.

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1 A. No, I'm not aware of that.

2 Q. Exhibit 63 that counsel for Philip  
3 Morris put before you, which is this Memorandum  
4 of Points and Authorities, you have that in front  
5 of you?

6 A. Yes.

7 Q. You testified that you've seen that  
8 before.

9 When have you seen that document  
10 before?

11 A. Are you referring to --

12 Q. Exhibit 63.

13 A. Just the Memorandum of Points and  
14 Authorities or the District Court memorandum or  
15 the whole thing?

16 Q. Well, we can start -- we can start  
17 with just the Memorandum of Points and  
18 Authorities.

19 A. And you're asking me when I saw this  
20 before?

21 Q. Yes.

22 A. I saw it in connection with my  
23 preparation here.

24 Q. That's not a document that was

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1 presented to you at the prior days of your  
2 deposition; is that right?

3 A. Well, it's hard to distinguish between  
4 this document and certain other pleadings that I  
5 think are also included here. I'm not sure which  
6 is which.

7 MR. BROAS: Mike, just to save time,  
8 we can stipulate that that was not shown to  
9 him by you, if that's what you want. I can  
10 certainly stipulate to that.

11 BY MR. STOLPER:

12 Q. I didn't mean to make it a confusing  
13 or tricky question, Mr. Holtzman. I'll represent  
14 that that wasn't marked at your prior deposition,  
15 so let me just clarify.

16 The first time you saw this document  
17 was in preparation for today's deposition?

18 A. I believe that's true, yes.

19 Q. This is a document that was given to  
20 you by the lawyers for Philip Morris?

21 A. Yes.

22 Q. Do you have an understanding of why  
23 this document was given to you?

24 MR. BROAS: I'll object on grounds of

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1 privilege.

2 I caution the witness not to disclose  
3 any privileged communications.

4 A. Well, in that case, there's not much I  
5 can say about it.

6 Q. I'd like to draw your attention to  
7 page 100, and I'm referring to the handwritten  
8 page numbering system on the right-hand corner of  
9 the document that was presented to you by lawyers  
10 for Philip Morris.

11 MR. ROGERS: What was the page, Mike?

12 MR. STOLPER: He's got it.

13 BY MR. STOLPER:

14 Q. Mr. Holtzman, page 100 is part of the  
15 arbitrator's decision that you testified about  
16 earlier.

17 Do you see that?

18 A. Yes, I do.

19 Q. Okay. I'd like to draw your attention  
20 on page 100 to the second to last paragraph of  
21 the arbitrator's decision.

22 Do you see the paragraph that begins  
23 "Thus..."?

24 A. Yes.

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1 Q. Can you read for the benefit of the  
2 jury what the arbitrator said, that first  
3 sentence there?

4 A. "Thus the smoking asbestos worker is  
5 very likely to die at a much earlier age than the  
6 nonsmoking asbestos worker, thus the employer is  
7 subject to increased premiums for workmen's  
8 compensation insurance, and more importantly, to  
9 the untimely early loss of trained employees.

10 Johns-Manville's desire to eliminate smoking  
11 among its employees is not without reason or  
12 proper motivation."

13 Q. Okay. Mr. Holtzman, is it your  
14 understanding that the tobacco industry had this  
15 document and this arbitrator's decision at around  
16 the time that it was issued in 1976?

17 A. I don't believe so. I don't think it  
18 saw this until later when the appeal was taken  
19 from this decision.

20 Q. But it's your understanding that  
21 individuals from the tobacco industry had this  
22 document around the time of the appeal?

23 A. No. Well, at around the time the  
24 appeal was filed.

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1 Q. Do you know when that was, roughly?

2 A. I think it was in '77, early part. In  
3 March or so of '77.

4 Q. Mr. Holtzman, in your Exhibit 33,  
5 which is the memo that you prepared dated March  
6 30th, 1977, subject "Johns-Manville No Smoking  
7 Rule" to which you testified, you were asked a  
8 series of questions by the attorney for Philip  
9 Morris about a report.

10 Do you see that report referenced in  
11 the second paragraph?

12 A. Yes.

13 Q. Have you seen a copy of that report  
14 recently?

15 MR. BROAS: Object to the form.

16 There's no testimony that it was a  
17 written report.

18 Object to the use of the word "copy."

19 A. Well, I've not seen what is referred  
20 to here as a report recently or any time as far  
21 as I know.

22 Q. Mr. Holtzman, I believe you previously  
23 testified that -- well, let me ask you this. Are  
24 you still consulting for Philip Morris?

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1 A. No.

2 Q. Are you being paid for your time  
3 today?

4 A. No, I'm not.

5 Q. Have you been paid for your time at  
6 all during the days your depositions have been  
7 taken?

8 A. No.

9 Q. Do you receive income from Philip  
10 Morris today?

11 A. Income? I receive a pension.

12 Q. Do you receive any other money or  
13 payments from Philip Morris?

14 A. I receive dividends on the stock that  
15 I own.

16 Q. Do you receive any consulting fees?

17 A. No.

18 Q. You say you own stock in Philip  
19 Morris?

20 A. Yes.

21 Q. How many shares of stock do you own?  
22 A. I can't tell you offhand.  
23 Q. Roughly.  
24 A. Ten, 15,000 shares.

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1 Q. Do you have an understanding as to  
2 whether or not the outcome of this litigation  
3 will affect the share price of Philip Morris?

4 MR. BROAS: Objection.

5 A. I think that's entirely speculative.  
6 I mean the range of outcomes is infinite and what  
7 effect it might have on the share price, I can't  
8 say.

9 MR. STOLPER: Okay. I have no further  
10 questions.

11 FURTHER REDIRECT EXAMINATION

12 BY MR. BROAS:

13 Q. One follow-up, Mr. Holtzman.

14 Mr. Stolper asked you with regard to  
15 Exhibit 63, that's the thick one.

16 A. Yes.

17 Q. Asked you if you had seen that for the  
18 first time during your preparation, and you  
19 answered Mr. Stolper that that was the first time  
20 you had seen it.

21 A. Yes.

22 Q. But isn't it true, Mr. Holtzman, that  
23 you testified on redirect, I just want for  
24 clarification, that you had seen at least one of

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page 448

1 the attachments to this exhibit? Is that  
2 correct?

3 MR. STOLPER: Objection. Leading.

4 A. Correct. Yes.

5 Q. In particular, the attachment that  
6 starts on page 94, which is the decision of the  
7 arbitrator?

8 A. Yes, that's right.

9 Q. You had seen that before, correct?

10 A. Yes.

11 MR. STOLPER: Objection. Leading.

12 BY MR. BROAS:

13 Q. In fact, didn't you testify that you  
14 had seen it at the time you wrote the March 30th,  
15 1977 memo which has been marked as Exhibit 33?

16 MR. STOLPER: Objection. Leading.

17 A. Yes.

18 Q. Mr. Stolper asked you a question about  
19 the basis for your knowledge or your  
20 understanding that the union approached the  
21 Tobacco Institute in connection with the smoking  
22 ban brief.

23 You recall that testimony?

24 A. Yes, I do.

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1 Q. Is it your understanding that in the  
2 ordinary course of business, the Tobacco  
3 Institute would not initiate contact with the  
4 union for such a purpose?

5 MR. STOLPER: Objection. Leading.

6 A. Yes, that's what I believe.  
7 MR. BROAS: I have nothing further.  
8 FURTHER RECROSS EXAMINATION  
9 BY MR. STOLPER:  
10 Q. One last question, Mr. Holtzman.  
11 Aren't you aware the Tobacco Institute  
12 contacted hundreds of businesses across the  
13 country regarding their smoking ban policies?  
14 A. I don't remember that.  
15 Q. Do you recall the Tobacco Institute  
16 distributing pamphlets and other information  
17 regarding smokers' rights in the workplace during  
18 the 1970s and '80s?  
19 A. I'm sorry, I don't remember that.  
20 Q. So it's possible the Tobacco Institute  
21 contacted businesses about smoking ban practices  
22 and you just don't recall today; is that right?  
23 MR. BROAS: Objection to the form.  
24 A. That's possible.

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1 MR. STOLPER: Thank you very much. I  
2 have no further questions.  
3 THE VIDEOGRAPHER: The time is 3:40  
4 p.m. on June 21, 2000. This completes the  
5 deposition of Mr. Alexander Holtzman.  
6 (Time noted: 3:40 p.m.)  
7  
8  
9

10 \_\_\_\_\_  
11 ALEXANDER HOLTZMAN  
12 Subscribed and sworn to before me  
13 this \_\_\_\_ day of \_\_\_\_\_, 2000.  
14 \_\_\_\_\_  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

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1 C E R T I F I C A T E  
2  
3 STATE OF NEW YORK )  
4 : ss  
5 COUNTY OF NEW YORK )  
6 I, ANNETTE ARLEQUIN, a Certified  
7 Shorthand Reporter and Notary Public within  
8 and for the State of New York, do hereby  
9 certify:  
10 That ALEXANDER HOLTZMAN, the witness  
11 whose deposition is hereinbefore set forth,  
12 was duly sworn by me and that such  
13 deposition is a true record of the testimony  
14 given by the witness.  
15 I further certify that I am not  
16 related to any of the parties to this action

17 by blood or marriage, and that I am in no  
18 way interested in the outcome of this  
19 matter.

20 IN WITNESS WHEREOF, I have hereunto  
21 set my hand this 22nd day of June, 2000.

22  
23

24 ANNETTE ARLEQUIN, CSR, RPR

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1 ----- I N D E X -----  
2 WITNESS REDIRECT RECROSS  
3 ALEXANDER HOLTZMAN  
4 By Mr. Broas 400,447 By Mr. Stolper 429,449

5  
6 ----- EXHIBITS -----Defendant's  
FOR ID.  
7 Defendant's Exhibit Holtzman-33, Memo dated  
8 3-30-77 from Holtzman to Distribution 406  
9 Defendant's Exhibit Holtzman-63, "Memorandum of Points and Authorities in  
10 Support of The Plaintiffs' Cross Motion forSummary Judgment in an Action before  
the  
11 United States District Court for theEastern District of Texas entitled  
12 Johns-Manville Sales Corporation versusInternational Association of Machinists,  
13 Local Lodge 1609" 413  
14 Defendant's Exhibit Holtzman-34, Memodated 3-2-79 from Bowling and Mebane  
15 to Holtzman 424  
16 Defendant's Exhibit Holtzman-35, coverletter from Temko to Crowder with an  
17 enclosed memorandum 419

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